

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *ES* D.C.
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THOMAS M. GOULD
CLERK U.S. DISTRICT COURT
WD OF TN MEMPHIS

JAMES MORRIS, X

Plaintiff, X

vs. X

No. 03-2929-M1/P

MARK LUTTRELL, et al., X

Defendants. X

ORDER DENYING MOTION FOR RECONSIDERATION
AND
ORDER DENYING MOTION FOR APPOINTMENT OF COUNSEL

Plaintiff James Morris, a resident of Memphis, who was formerly incarcerated as an inmate at the Shelby County Criminal Justice Center (Jail), filed a complaint pursuant to 42 U.S.C. § 1983 on November 28, 2003, raising multiple issues arising from his confinement at the Jail. The complaint was dismissed without prejudice, pursuant to 42 U.S.C. § 1997e(a), and judgment was entered on October 6, 2004, because the plaintiff had not satisfied his burden of demonstrating that he had exhausted his administrative remedies.

On January 18, 2005, plaintiff submitted motions for appointment of counsel and reconsideration of the dismissal order. The motion for reconsideration included attached copies of two grievances purportedly filed on January 1, 2003, and October 8, 2003. Plaintiff alleged in the original complaint that he filed

"grievances" and also presented his issues "verbally" and "personally" to Jail authorities. He also alleged that the grievance procedure was futile due to a corrupt officer who retaliated for grievances. Plaintiff alleges in the motion for reconsideration that he "wasn't able to obtain the appropriate assistance in exhausting the remedies." The attached grievances do not indicate that plaintiff appealed the denial of those grievances and are insufficient to demonstrate that Morris completely exhausted his administrative remedies before filing this complaint.

The Court's order of dismissal advised plaintiff of his affirmative burden to:

plead his claims with specificity and show that they have been exhausted by attaching a copy of the applicable administrative dispositions to the complaint or, in the absence of written documentation, describe with specificity the administrative proceeding and its outcome.

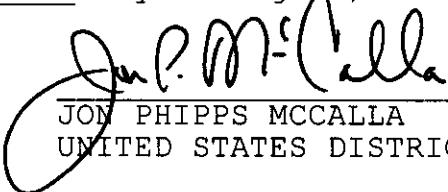
Knuckles El v. Toombs, 215 F.3d 640, 642 (6th Cir.), cert. denied, 121 S. Ct. 634 (2000); see also Baxter v. Rose, 305 F.3d 486, 489 (6th Cir. 2002) (prisoner who fails to adequately allege exhaustion may not amend his complaint to avoid a *sua sponte* dismissal); Curry v. Scott, 249 F.3d 493, 503-04 (6th Cir. 2001) (no abuse of discretion for district court to dismiss for failure to exhaust when plaintiffs did not submit documents showing complete exhaustion of their claims or otherwise demonstrate exhaustion). Accordingly, Morris may not amend his complaint to cure a failure to plead exhaustion, even if he now obtains copies of grievances demonstrating exhaustion. Baxter v. Rose, 305 F.3d 486, 488-89

(6th Cir. 2002). As the Sixth Circuit explained, "The bar on amendment similarly serves the purpose of the heightened pleading requirement, permitting courts to assess the fundamental viability of the claim on the basis of the initial complaint." In any event, the new submissions do not demonstrate exhaustion.

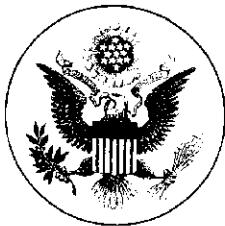
Thus, plaintiff's motion for reconsideration alleges no facts or law justifying reconsideration of the Court's order of dismissal. Accordingly, plaintiff's motion for reconsideration is DENIED. Furthermore, no appointment of counsel is warranted because plaintiff's complaint has been dismissed. The motion for appointment of counsel is DENIED.

The Court repeats its previous certification, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal in this matter by plaintiff is not taken in good faith and plaintiff may not proceed on appeal in forma pauperis.

IT IS SO ORDERED this 27 day of August, 2005.



JON PHIPPS MCCALLA
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 13 in case 2:03-CV-02929 was distributed by fax, mail, or direct printing on August 29, 2005 to the parties listed.

James L. Morris
4052 Mossville St.
Memphis, TN 38109

Honorable Jon McCalla
US DISTRICT COURT